

GRANT NO. G0100204 COVERSHEET
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
and
CITY OF GOLDENDALE



THIS is a binding agreement entered into by and between the State of Washington, Department of Ecology (P.O. Box 47600, Olympia, Washington, 98504-7600), hereinafter referred to as the DEPARTMENT and the City of Goldendale, hereinafter referred to as the RECIPIENT to carry out the activities described herein.

RECIPIENT's Legal Address:

City of Goldendale
P.O. Box 69
Goldendale, WA 98620

RECIPIENT's Authorized Representative: Larry Bellamy, City Administrator
RECIPIENT's Telephone Number: 509-773-3771

The source of funds provided by the DEPARTMENT is Drought Preparedness Account provided by Chapter 399, Laws of 1999 amending Chapter 43.83B RCW (Water Supply Facilities) and Chapter 173-167 WAC (Drought Relief).

For the purpose of this agreement, the Project Officer assigned for the DEPARTMENT will be Ray Newkirk, 360-407-6630.

Grant Amount: \$180,000.00
Eligible Project Cost: \$450,000.00
DEPARTMENT Share: \$180,000.00
RECIPIENT Share: \$270,000.00

State Maximum Cost Share Rate: 40 Percent

The effective date of this grant is March 17, 2001. Any work performed prior to the effective date of this agreement without prior written authorization and specified in the Scope of Work will be at the sole expense and risk of the RECIPIENT.

This agreement shall expire no later than December 31, 2001.

SCOPE OF WORK

Project Description

This is an emergency project as defined by WAC 173-167 and is to provide drought relief for the City of Goldendale. The principal project features are: (1) complete construction of the chlorination station well and (2) install a filtration system at the Bloodgood Springs water supply source.

Summary of Estimated Costs

<u>Item</u>		<u>Total</u>
<u>Element #</u>	<u>Eligible Project Costs</u>	
1.	Total Direct Construction Cost (including engineering, contract administration, sales tax, and preconstruction costs)	\$445,000.00
2.	Overhead Costs (25% of direct labor costs only)	\$ 5,000.00
	TOTAL ELIGIBLE PROJECT COSTS	<hr/> \$450,000.00

Funding Plan

Eligible Project Costs:

Grant from DEPARTMENT (40% of eligible costs)	\$180,000.00
RECIPIENT's funds (60% of eligible costs)	<u>\$270,000.00</u>
TOTAL PROJECT COSTS	\$450,000.00

SPECIAL TERMS AND CONDITIONS

A. WATER WELL CONSTRUCTION

All water well construction covered by this agreement shall comply with the following standards:

1. Minimum Standards for Construction and Maintenance of Wells, Chapter 173-160 WAC.
2. Water Well Construction Act (1971), Chapter 18.104 RCW.

A copy of these standards is attached to this agreement.

B. REQUIREMENTS FOR INSTALLATION, OPERATION AND MAINTENANCE OF FLOW METERS

All water well construction covered by this agreement shall install, operate, and maintain a flow meter on each well to comply with the following:

WAC 508-64-020 METER SPECIFICATIONS: All meters required to be installed, as provided under WAC 508-64-010, shall meet the following requirements:

(1) Meters shall be of the velocity-propeller type with enclosed propeller made of non-corrosive materials or of the sonic flow meter type. Positive displacement and other types of meters may be used with the express approval of the Department of Ecology. Although not cited in WAC 508-64, sonic flow meters have been approved by the Central Regional Office Water Resource Program of the Department of Ecology as an acceptable alternative to the velocity-propeller type meter. All meters shall be line meters. Meters shall be complete with meter head, register box with locking hasp, and straightening vanes for attachments to existing pipe or contained within a tube. The saddle or tube-type meters shall be of a construction such that any part of the propeller, gears, shafts, totalizer, or any other moving part can be removed for repair with relative ease. The saddle-type meter shall be designed and constructed so as to be suitable for welding or bolting to the existing or installed steel pipe but with removable meter head or designed so that it may be secured to the pipe by anchor bars welded to the pipe with U-bolts, or with threaded straps. All meters shall have the size, serial number, and direction of the flow through the meter properly and clearly indicated.

(2) The meter shall have a rated accuracy of plus or minus 2 percent of actual flow for all rates of flow within the range of flow for which the meter is designed. The meter shall register the full range of discharge from the source of water for which it is to be used.

(3) The meter shall have a visual, digital totalizer located on or adjacent to the meter. The register shall be protected.

(4) Units of measure for irrigation uses shall be in acre-feet. The totalizer shall read directly in acre-feet with six digits to read to the nearest hundredths (0000.00). Both the register and meter unit shall be provided with a method of sealing with a wire or lead seal to prevent unauthorized tampering. For other uses, different units of measurement may be used with the express approval of the Department of Ecology. All totalizers or registers shall be equipped to enable taking instantaneous readings.

(5) Register Boxes – The register box shall have a protective hinged cover over the window glass. Register box screws shall be drilled for seal wire holes.

(6) Propeller – The propeller shall be made of polyethylene or equivalent corrosion-resistant material and such that it will operate effectively and without distortion at temperatures between 32° and 100° Fahrenheit. The propeller shall be located in the center of the pipe and normal to the centerline of flow. The measuring propeller, together with its spindle, shall be the same specific gravity as water or less.

WAC 508-64-030 METER INSTALLATION REQUIREMENTS: Meters required to be installed under WAC 508-64-010, shall meet the following installation requirements:

(1) The meter shall be installed in accordance with manufacturer specifications and in such a manner that there shall be a full pipe of water at all times when water is being withdrawn.

(2) Straightening vanes shall be installed in the pipe in the manner recommended by the manufacturer of the meter, or vanes may be part of the tube furnished with tube-type meters or separate units for installation in the discharge pipe upstream of the meter.

(3) There shall be no turnouts or diversions between the source of water and the meter installation, except for faucet or other similar small outlets.

(4) The meter shall be placed in the pipe not less than five pipe diameters downstream from any valves, elbows, or other obstructions which might create turbulent flow, or as recommended by the meter manufacturer. There shall also be at least one pipe diameter of unobstructed flow on the downstream side of the meter.

(5) The meter and register shall not be enclosed in a building or structure in such a manner as to prevent access to the register. The register or meter shelter may be equipped with a lock to prevent tampering or breakage, provided that a key is made available to authorized employees of the Department of Ecology at the place of business during normal working hours or at the residence in case of private parties.

(6) Provisions shall be made for removal and rating of the meter in accordance with the manufacturer's specifications.

(7) In those cases where wells are authorized for the purpose of supplementing surface waters with water from combined sources not to exceed a total quantity, both sources of water shall be metered.

(8) In the case of artesian wells which flow at times, the meter shall be installed in a manner which will measure both pumped and flowing discharge.

(9) The owner shall cause the Department of Ecology to be notified within ten days from the installation of the meter.

(10) The meter installation shall be inspected and approved by the Department of Ecology.

WAC 508-64-040: METER OPERATION AND MAINTENANCE: Meters installed hereunder shall be operated and maintained in accordance with the following:

(1) No withdrawal or diversion of water shall be made unless the meter installation has been inspected and approved by the Department of Ecology and is in proper operating condition.

(2) Meters shall be repaired and returned to operation as soon as possible upon discovery of a malfunctioning meter. The Department of Ecology shall be notified immediately of such malfunctioning meter. In all cases the meter reading immediately prior to repair and the reading of the new or repaired meter shall be submitted to the Department of Ecology on forms provided within ten days following reinstallation of the meter and/or meter head.

(3) Water use data shall be submitted to the Department of Ecology on forms provided for that purpose at such times as may be required by the Department.

(4) Meters shall be kept clear of debris or any other material or vegetative growth which would impede their operation. All meters shall be lubricated as specified by the manufacturer.

(5) Meters which are not properly operated and maintained shall be repaired or replaced upon order of the Department of Ecology within the time specified within said order.

C. INSPECTIONS

1. Any and all work undertaken by the RECIPIENT pursuant to this grant shall be open and subject to inspection by the DEPARTMENT at all times during the progress thereof and upon completion.

D. REPORTS

The RECIPIENT shall prepare and furnish to the DEPARTMENT the following report:

Upon completion of the construction work, a final project summary report shall be submitted to the DEPARTMENT in a form designated by the DEPARTMENT.

The project summary report shall be signed by the chief project engineer responsible for the project, declaring that the project was, to the best of his/her knowledge, constructed and completed in accordance with the approved project plans, designs, specifications, and change orders.

E. WORK TO BE PERFORMED

To the extent that funds therefore may now or hereafter be available pursuant to the terms of this grant, the RECIPIENT shall, on its own account, or by contract or contracts, undertake the work and special conditions, described and set forth in the Scope of Work of this grant, substantially in accordance with the approved designs, plans, and specifications.

F. COSTS OF THE RECIPIENT

Funding under this grant shall be limited to those costs approved by the DEPARTMENT which have been reasonably incurred or are to be incurred by the RECIPIENT in the exercise of sound engineering and construction. Such costs may include, but are not necessarily limited to, surveys and investigations in connection with the project; costs for preparation of designs; plans; and specifications; engineer's estimates; legal work; supplies; material; equipment rental; labor; payments under construction contracts; acquiring lands or any interests in lands necessary for construction; administrative work directly related to project construction; and other costs relating to the work all as approved by the DEPARTMENT as having been, or to be reasonably incurred.

G. OPERATION AND MAINTENANCE

The RECIPIENT shall cause the project to be operated in an efficient and economical manner; shall provide for the making of all repairs, renewals, and replacements necessary to the efficient operation of the same; and shall cause the same to be maintained in an efficient condition, ordinary and reasonable wear and depreciation expected.

H. ALL WRITINGS CONTAINED HEREIN

This agreement, consisting of the Coversheet, Scope of Work, Special Terms and Conditions and the appended "General Terms and Conditions," the DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans," and Appendix A contain the entire understanding between the parties, and there are no other understandings or representations set forth or incorporated by reference herein. No subsequent modification(s) or amendment(s) of this agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and DEPARTMENT, and made a part of this agreement; EXCEPT, this in relation to change of the DEPARTMENT's Project Officer, or the RECIPIENT's Authorized Representative as set forth on the Grant Coversheet, either party may make such change by sending a


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letter to that effect without the signature of the other party; EXCEPT, that in relation to the effective date and time for performance on the Coversheet, the DEPARTMENT may modify or amend the grant agreement without the signature of the other parties.

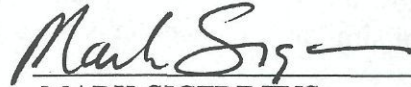
IN WITNESS WHEREOF, the parties hereby execute this grant:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

CITY OF GOLDENDALE

 9/28/01

JOE STOHR Date
PROGRAM MANAGER
WATER RESOURCES PROGRAM

 8/22/01

MARK SIGFRINIUS Date
MAYOR

Approved as to form only by
Assistant Attorney General.

TAX ID# 91-6001249

Appendix A

GUIDELINE:
SUBMISSION OF A19-1 VOUCHER
AND SUPPORTIVE DOCUMENTS
(COST REIMBURSEMENT)

The purpose of this appendix is to assist the RECIPIENT in determining allowable items of cost. If the RECIPIENT fails to name an item of cost in the request for payment, this does not imply it is either allowable or unallowable; rather, determination of allowability shall be based upon the treatment of similar or related items of cost.

1. Factors Allowing Cost

In order to be allowable, costs must:

- a. Be necessary and reasonable and not be a general expense,
- b. Not be prohibited by any laws or regulations,
- c. Conform to any cost limitations or exclusions,
- d. Be consistent with state and federal (when applicable) policies, regulations and procedures,
- e. Be given consistent treatment through uniform accounting principles,
- f. Not be allocated to or included as a cost of any other state/federally financed program, past, or present,
- g. Be net of all allowable credits.

2. Certification

To assure expenditures are proper, vouchers requesting payment must be certified by the RECIPIENT. Form A19-1 has a certification provision which must be signed by the RECIPIENT or its authorized representative before payment will be allowed.

3. Credits

The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the RECIPIENT, must be credited to the DEPARTMENT, either as a cost reduction, or by cash refund, as appropriate.

4. Unforeseen/Emergency Expenditures

A contingency line item providing a specified amount for reimbursements for unforeseen expenditures may be made only with the prior written approval of the DEPARTMENT.

5. Allowable Costs

Generally, whether costs are allowable depending upon cost principles applicable to the particular project agreement. However, certain costs are commonly allowed. These include:

- advertising
- compensation for personal services
- depreciation and use allowances
- employee fringe benefits
- employee morale, health and welfare
- maintenance and repair
- materials and supplies
- memberships, subscriptions and professional activities
- taxes
- training and education
- transportation
- travel

Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

Where any questions involving allowability of costs arise, the DEPARTMENT's project officer should be consulted; otherwise, certain costs may be disallowed.

6. Payroll and Distribution of Time

Amounts charged for personal service, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with the generally accepted practice of the state or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one cost objective must be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort. Such time records must be certified by the project director. Such certified records are the only allowable source document for charging and reporting personnel expenditures.

7. Unallowable Costs

Certain costs are commonly disallowed. These unallowable costs include:

- bad debts
- contingencies
- contributions and donations
- entertainment
- finances and penalties
- interest and other financial costs
- underrecovery of costs under grant agreements

Once again, whether a cost is unallowable depends upon the applicable cost principles to the agreement. Failure to clarify any question whether a cost is unallowable or allowable may result in its disallowance by the DEPARTMENT.

GENERAL TERMS AND CONDITIONS
Pertaining to Grant and Loan Agreements of
the Department of Ecology

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall not assign or subcontract performance to others unless specifically authorized in writing by the DEPARTMENT.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

E. ASSIGNMENTS

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. The RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.
3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object.

All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.
3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.
4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations) or OMB Circular A-110 (Uniform Administrative Requirements for Grants & Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations) if the RECIPIENT receives federal funds in excess of \$300,000. The RECIPIENT must forward a copy of the state auditor's audit along with the RECIPIENT response and the final corrective action plan as approved by the SAO to the DEPARTMENT within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within twenty (20) days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall be made on a reimbursable basis at least quarterly and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and certified as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Budget deviation. Deviations in budget amounts are not allowed without written amendment(s) to this agreement. Payment requests will be disallowed when the RECIPIENT's request for reimbursement exceeds the State maximum share amount for that element, as described in the Scope of Work.
3. Period of Compensation. Payments shall only be made for action of the RECIPIENT pursuant to the

grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

4. Final Request(s) for Payment. The RECIPIENT must submit final requests for compensation within forty-five(45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
5. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance and a financial bond. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6., herein.
6. Unauthorized Expenditures. All payments to the RECIPIENT shall be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.
7. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law.
8. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds thereunder and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above. When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; Provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.
3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date mutually agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.
Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that developed by the RECIPIENT as provided in 35 U.S.C. 200-212.
2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.
3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
 - a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
 - b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. RECYCLED/RECYCLABLE PAPER

All documents and materials published under this agreement shall be produced on recycled paper containing the highest level of post consumer and recycled content that is available. At a minimum, paper with 10 percent post consumer content and 50 percent recycled content shall be used. Whenever possible, all materials shall be published on paper that is unbleached or has not been treated with chlorine gas and/or hypochlorite.

As appropriate, all materials shall be published on both sides of the paper and shall minimize the use of glossy or colored paper and other items which reduce the recyclability of the document.

O. **RECOVERY OF PAYMENTS TO RECIPIENT**

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. **PROJECT APPROVAL**

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. **DISPUTES**

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

R. **CONFLICT OF INTEREST**

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. **INDEMNIFICATION**

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

V. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions.